IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 164 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VINOD AMIN & COMPANY, C.A., THROUGH ITS PROPRIETOR

Versus

RAHI CHEMICALS LTD.

Appearance:

1. COMPANY PETITION No. 164 of 1999

MR PRADEEP PATEL for Petitioner No. 1

MR BS PATEL for Respondent No. 1

CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 22/10/2001

ORAL JUDGEMENT

1. The petitioner-creditor has filed this petition under section 433 and 434 of the Companies Act, 1956, praying to wind up the respondent Company, together with

appointment of Official Liquidator under the Companies Act, 1956.

2. The petitioner is a firm of practicing Chartered Accountant, having its office at Alkapuri, Vadodara; that the respondent M/s. Rahi Chemicals Limited, is incorporated under the Companies Act, and having its registered office at 401, Ivory Terrace, R.C. Dutt Road, Alkapuri, Vadodara, and it works at Block No. 537, At & Po. Magnad, Taluka Jambusar, District Bharuch, engaged in production,manufacture, sale and distribution of chemicals and chemical products of every nature of Sodium Bisulphide, Ammonium Bisulphide, all types of Reagent, Catalytic Reagent, Food colours and preservatives and other fine chemicals.

3. The petitioner's services were engaged by respondent Company for the purpose of carrying out audit work of the Company, and the petitioner firm accordingly was carrying out work of audit from time to time to the satisfaction of the respondent Company; that the petitioner as Chartered Accountant carried out audit work of the year 1995-96 and raised bill dated 26-9-1996 for the amount of Rs.50,000/- by way of professional charges/fees. That, in the earlier years also petitioner used to render his services as professional Chartered Accountant/ Auditor; that the bill for professional fees raised by the petitioner for the services rendered for financial year 1995-96 was as per the terms agreed with the respondent Company; that the respondent Company failed to make payment of professional fees/ charges to the petitioner; that the petitioner sent number of reminders time & again, but of no avail. The petitioner also called upon the respondent by statutory notice dated 12-4-1999 (Annexure-B), but no reply has been given by respondent Company to the said statutory notice. It is further say of the petitioner that the respondent Company is not in a position to discharge its obligation of payment of professional fees/ charges to the petitioner and that the respondent Company is required to be wound up. That the respondent Company is commercially insolvent Company and otherwise also respondent Company is unable to meet its dues outstanding of various other creditors. That, it is absolute therefore necessary, just and proper that the respondent Company be wound up.

4. After institution of the petition, vide order dated 18-6-1999 notice was issued to the respondent Company. Vide order dated 13-8-1999 petition was admitted and the respondent Company despite due service failed to appear and the petition was admitted and

advertisement was ordered to be published in the local daily newspapers with final hearing date as 22-9-1999. Public notices were advertised in Indian Express and Sandesh, both dated 24-8-1999, of Vadodara edition, and was also published in Government Gazette dated 9-9-2001.

5. On 10-10-2000 the respondent appeared and filed affidavit of Mr. Ahmad Patel, Chairman & Managing Director of respondent Company, and testified to the effect that the respondent Company had submitted a Reference bearing BIFR Case No. 370 of 1999, before the Board of Industrial & Financial Reconstruction. Thereafter the matter dragged for considerable time by one statement or the other made by counsel for the respondent. Finally on 10-10-2001 Mr. A.I.Pathan, advocate for Mr. B.S. Patel, advocate for the respondent Company stated that, in view of order dated 5-1-2001 passed by AAIFR in Appeal No. 368 of 2000, there is no proceeding pending either before BIFR or before AAIFR against respondent Company. It is stated by Mr. Pathan that an appropriate order be passed considering contentions in the petition.

6. Thus, it is seen from the above that there are no proceedings pending against the respondent Company either before BIFR or AAIFR.

7. As seen above, the petitioner was engaged as Chartered Accountant / Auditor by the respondent Company and that the petitioner rendered his professional services as the Auditor for year 1995-96 and carried out the audit work entrusted by respondent Company to the petitioner. The petitioner raised bill for professional charges/fees to the tune of Rs.50,00/-. The respondent as alleged in the petition did not respondent to any of the reminders or requests for payment of professional fees/charges, which required the petitioner to serve respondent with a statutory notice dated 12-4-1999 and the respondent failed to give any reply to the said statutory notice or disputed the claim of the petitioner in any manner. The respondent has not filed any reply to this petition controverting the say of the petitioner. Thus, it will be seen from above, that the dues of petitioner to the tune of Rs.50,000/- by way of professional fees/ charges for the professional services as an Auditor rendered for year 1995-96 by the petitioner to the respondent Company remains unchallenged / uncontroverted for want of any reply to the statutory notice dated 12-4-1999 served by petitioner, or affidavit in reply to the petition.

8. It will be seen from above that, earlier an application being Case No. 370 of 1999 was registered before BIFR as the respondent Company had filed Reference, the BIFR passed an order dated 9-6-2000 rejecting reference of the respondent, which order was carried to the Appellate Authority For Industrial & Financial Reconstruction,New Delhi (AAIFR) by way of appeal No. 368 of 2000. AAIFR dismissed the appeal vide order dated 5-1-2001. Copy of order dated 5-1-2001 passed in Appeal No. 368 of 2000 by AAIFR and copy order dated 9-6-2000 passed by BIFR in Case No. 370 of 1999 are placed on record.

9. It will be seen from above that the dues of the petitioner are not disputed or controverted. There is no reply to the statutory notice dated 12-4-1999, and also no reply to the petition, wherein petitioner has specifically alleged that the respondent Company is commercially insolvent and not in a position to discharge its financial obligation and unable to pay dues of the petitioner and that of other creditors also. It may also be noted that, no other creditor has come forward in response to the public notice referred to above.

10. The above discussion would reveal that the petitioner's dues amounting to Rs.50,000/- by way of professional fees are outstanding/ due & payable by respondent Company and that the respondent Company has not denied its liability by filing reply to the statutory notice or to the petition. This shows that the respondent Company is not in a position to discharge its liabilities. It would be expedient to direct winding up of the respondent Company as ingredients under section 433 and 434 of the Companies Act have been satisfied by the petitioner.

11. In view of above the petition is allowed. Respondent Company M/s. Rahi Chemicals Limited, having its Registered Office at 401, Ivory Terrace, R.C. Dutt Road, Alkapuri,Vadodara - 7 and its factory at: Block No. 537, At & Po. Magnad, Taluka Jambusar, District Bharuch - 392 150, is hereby ordered to be wound up. Official Liquidator attached to the High Court is appointed as the Official Liquidator, who will take charge/ possession of all assets, and properties of respondent M/s. Rahi Chemicals Limited, having its Registered Office at 401, Ivory Terrace, R.C. Dutt Road, Alkapuri, Vadodara - 7 and its factory at: Block No. 537, At & Po. Magnad, Taluka Jambusar, District Bharuch-392 150; with all powers under the provisions of Indian Companies Act, 1956. No order as to costs.

Dt: 22-10-2001 (N.G. Nandi, J)

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